(61)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench: Hon'ble Shri S.R. Nayak, CJ

Writ Petition No. 6153 OF 2005

PETITIONER		M/s Indian Ispat Works (P) Ltd. (Small Scale Industry Unit) O-2, Farishta Complex, G.E. Road, Raipur, Dist:- Raipur (C.G.) 492 001 Through Its Director: B.K. Goyal S/o N.R. Goyal, Aged about 53 years.
	Versus	
RESPONDENTS	1.	The Commissioner, Central Excise & Customs, Central Revenue Building, Civil Lines, Raipur
	2.	The Customs Excise & Service Tax Appellate Tribunal, West Block No. 2, R.K. Puram, New Delhi - 110 066

Present:
Mr. B.P. Mishra, learned counsel for the petitioner.

ORAL ORDER
(Passed on 6th of December 2005)

The Customs Excise & Service Tax Appellate Tribunal, New Delhi has dismissed the appeal preferred by the petitioner herein on the ground of delay. There was delay of 1178 days in filing the appeal before the Tribunal. The appeal was directed against the order of the Commissioner of Central Excise dated 08-05-2001. The only explanation offered in the application filed by the petitioner for condoning the inordinate delay of 1178 days was that the order passed by the Commissioner of Central Excise is not in proper format, meaning thereby, the order did not contain the Preamble to be incorporated in the order. The Tribunal not being satisfied with the above explanation dismissed the application and

consequently dismissed the appeal preferred by the petitioner. Hence, this writ petition under Article 226 of the Constitution of India.

2. I have heard learned counsel for the petitioner. The same contention which was urged before the Tribunal was reiterated before me also. The contention is not acceptable to the Court for more than one reason. It is not the case of the petitioner that in the copy of the order served on the petitioner there was no determination of annual capacity of their Rolling Mill. It is pointed out that the order made by the Commissioner of Central Excise and served on the petitioner did contain the determination of annual capacity. Therefore, if the petitioner was aggrieved by the said determination, ought to have preferred an appeal within a reasonable time, if not, within the period of limitation. Alternatively, it needs to be noticed that if the petitioner who is not an individual but a company, really thought that it could not prefer an appeal to the Tribunal without incorporation of the Preamble in the order of the Commissioner of Central Excise dated 8.5.2001, there was no impediment for the petitioner to move necessary application before the Commissioner seeking incorporation of Preamble in the order. Such an attempt was not made before the Commissioner within the reasonable time. The delay of 1178 days is not a small delay which the Court can ignore in a matter like this. The law helps diligent, not indolent. In that view of the matter, I cannot take any exception to the order of the Tribunal impugned in this writ petition. The writ petition is, therefore, dismissed. There is no order as to costs.

Sd/-
Chief Justice